

Unclassified

English - Or. English

27 May 2024

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

Competition and Regulation in Professional Services – Note by Greece

10 June 2024

This document reproduces a written contribution from Greece submitted for Item 8 of the 77th meeting of Working Party 2 on 10 June 2024.

More documents related to this discussion can be found at
www.oecd.org/competition/competition-and-regulation-in-professional-services.htm

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1. Introduction

1. This Note overviews the policy developments that Greece had to bring in the context of regulatory reforms in professional services that became apparent due to the country's economic crisis. It further gives an overview of the legal opinions issued by the Hellenic Competition Commission (HCC) and in general the advocacy role of the Authority in the effort conducted by the Greek State.

2. In this context, the Note primarily describes the initial changes that took place on a legislative basis and outlines the advocacy role of the HCC for the competent Ministries, and the legal framework under which the HCC assessed the legislative proposal and issued a prior legal opinion. In the second part, it gives an overview of the legal opinions issued by the HCC on liberal professions, it describes the basic steps for the assessment of the legislation under review, it notes the restrictions which the HCC proposed their abolishment and the relevant justification as well as the restrictions which were considered as justified and non-discriminatory.

2. Policy developments and challenges

3. The first years of the First Economic Adjustment Program in Greece included, among other, an overview of the legislation regulating the access to professions and their practice in Greece. The review led to the conclusion that the legislation was characterized by a big production of protective and permissive provisions, scattered in different pieces of legislation, which constituted a clear restriction to the, constitutionally guaranteed, right to professional freedom.

4. These regulations were not, in principle, constituting a systematically structured legislation, but an aggregate of provisions with no internal coherence, in which it was not always apparent the public policy objective pursued. On the contrary, they created the impression that said provisions were aimed at satisfying the interests of specific professional groups.

5. But even in case where it would be possible to accept the existence of a public interest which must be served, as a general rule there was still no justification as to why, in order to satisfy the objective pursued, such public interest could not be served by another, non restrictive to professional freedom, measure. Additionally, even when the adoption of a regulation for a profession could be considered, as a general rule, necessary, however, the imposition of certain restrictions was not accompanied by an assessment that such restrictions were considered as necessary for the protection of a specific public interest objective and proportional to the objective pursued and why less onerous provisions could not achieve the said objective.

6. Within this context of Greece's economic adjustment, the Greek Parliament voted the Law 3919/2011 for the abolishment of certain restrictions on liberal professions. According to the recitals of Law 3919/2011, from an overview of the legislative provisions on the access and practice of liberal professions, their impact could be categorized in three basic categories; the typical bureaucratic provisions, such as administrative licensing requirements, which, regardless to the restriction or not to competition, they issued an unjustified procedure which imposed administrative costs to the exercise of the profession.

To those provisions, which resulted in a substantial restriction of competition and may lead to an increase in the prices of goods and services compared to a more competitive market, but did not impose a substantial burden on the economy because they concerned professions exercised by a small number of people and to those which have a serious impact on competition, because they substantially restricted competition and concerned professions exercised a big number of people, i.e. engineers, architects, lawyers, notaries etc. Law 3919/2011 foresaw the abolishment of certain restrictions on liberal professions, such as fixed fees, minimum fees, geographic restrictions which prevented the professionals from exercising their activity outside the specified geographical area, restrictions on advertising. The above-mentioned legislation also replaced the prior-authorization licensing system for the exercise of a profession with a prior-notification system. The licensing system and further restrictions could only be foreseen for some professions, following a prior legal opinion issued by the Hellenic Competition Commission, under its competence¹. In this case, the competent Ministry should address the legislative proposal to the HCC with a request for review and issuance of an opinion.

3. The Advocacy Role of the HCC vis-à-vis the Public Authorities- An overview

7. In this framework, the HCC advocated for a broad and extensive pro-competitive reform of professional services. Specifically, the HCC, under its competence, from 2011 to 2017, issued more than thirty legal opinions. The Authority created a task force on liberal professions, which, in 2011, reviewed laws and regulations related to more than forty-five professions and in 2012, it reviewed more than fifty-five and issued eighteen legal opinions². Between 2013 and 2017, the HCC issued seven additional legal opinions. The HCC reviewed all legislation proposed and submitted to it by the competent Ministries and made the assessments based on the principle of proportionality, i.e: a) the restriction was appropriate to achieve the pursued result, b) the restriction was deemed necessary, c) the restriction was necessary and relevant to the objective pursued and on the principle of non-discrimination.

8. The basic principals that can be found in the legal opinions can be summarized as following³:

- Abolition of prior administrative authorization where this is not justified on grounds of public interest (for example actuaries, accountants and tax consultants, teachers of private schools, and private schools, language school teachers, tourist

¹ According to article 23 (1) and (3) of National Competition Act 3959/2011 1. “The Competition Commission shall issue an opinion on matters within its competence, either on its own initiative or upon request by the Minister of Economy, Competitiveness and Shipping or another competent Minister.... 3. The Competition Commission shall express an opinion on draft laws and other regulations that may create barriers to the functioning of free competition. The Competition Commission's opinion may be requested by the competent Government body to which it shall be transmitted...”

² See further OECD Peer Reviews of Competition Law and Policy in Greece (2018) <https://www.epant.gr/en/enimerosi/publications/other-publications/item/609-oecd-peer-review-2018.html>

³ See HCC Annual Report (2013) and (2014) available in Greek, <https://www.epant.gr/enimerosi/dimosieyseis/ektheseis-pepragmenon.html> and OECD Peer Reviews of Competition Law and Policy in Greece (2018), <https://www.epant.gr/en/enimerosi/publications/other-publications/item/609-oecd-peer-review-2018.html>

guides). The system of prior authorization has been maintained for other professional sectors (in sectors related to security matters).

- Simplification of regular certification requirements (for example accountants and tax consultants) and of the examinations for professional licenses (for example actuaries, chartered surveyors).
- Reorganisation of certain professions and abolition of exclusive rights so that professionals and legal persons with similar professional qualifications may also exercise the profession.
- Removal of additional restrictions on access and exercise of professions, such as (i) numerus clausus, (for example chartered surveyors, educational services), (ii) geographical restrictions (for example, trader of objects of archaeological value), (iii) fixed fees (for example, certified appraisers), (iv) restrictions on nationality and freedom of establishment (for example, educational services), (v) incompatibility between different activities (for instance, trader of objects of archaeological value and art collectors).

9. A first review of liberal professions was made by the HCC in (draft) Law 3919/2011, prior to its adoption by the Hellenic Parliament⁴. Law 3919/2011 on the one hand, it was setting the general framework and the general principals regarding the exercise of professional services and on the other hand, it specifically included provisions for the professions of notaries, lawyers, engineers and auditors. Regarding the notaries, restrictions such as the prohibition on advertising, the request to obtain a special administrative license for the exercise of the profession, the numerus clausus, the prohibition of exercising the profession outside a certain geographical area, the exclusivity of activities, the regulated prices, were still in force. The HCC concluded that since notaries are public officials, many of the existing restrictions were likely to be retained to protect other public interests beyond free competition. However, the HCC underlined as a significant progress the fact that fixed prices have been replaced with maximum prices and that notaries could compete on this field. Taking this into consideration, the HCC concluded that restrictions on advertisement should be abolished.

10. With reference to lawyers, the removal of geographical restrictions on the exercise of the profession, was expected to improve significantly the competitive conditions in the market by increasing consumer's choice and by reducing the cost of such services. The provisions for "minimum prices" on lawyers have been replaced by "legal fees" which applied only in the absence of a valid written agreement on fees between the parties. The HCC considered this provision as justified, for reasons of public interest, expressly mentioned in the law, namely for the purposes of the award of legal costs and the costs paid to the Bar Associations, indicating, however, that such legal fees should not act as focal point. The same assessment was made for the "legal fees" applied to engineers. On the contrary, the HCC decided that the provision of minimum workings hours for the provision of a service by the auditors constituted a restriction to competition, since it could easily lead indirectly in setting of minimum prices. It also deprived the auditor of the possibility of freely negotiating his fee in relation to the possibility of carrying out the audit in a timeframe below the minimum, as defined by law. Finally, the HCC decided that the provision was a disincentive to increase the speed, flexibility and efficiency of the auditors.

11. The HCC further examined the legislation regarding the profession of engineers and notified the different treatment of the law to the engineers depending on whether they

⁴ Legal Opinion 11/2011, available in Greek https://www.epant.gr/files/2011/apofaseis/GNOM_11_2011KLEISTAEPAG.pdf

were involved in public or private projects. Regarding the access to the profession, the Authority suggested an amendment of the criteria, based on the expertise/ actual experience, and not simply based on academic qualifications awarded by specific educational institutions and on the number of years following the award of the degree⁵. More generally, due to inconsistencies, ambiguities and legal uncertainty of the legislation, the HCC proposed a radical revision and the adoption of a new law that would systematize and unify the legislation for public and private works and would specify on an objective basis the professional qualifications required. Upon initiative of the competent Ministry, the relevant opinion, led to the issuance of a Presidential Decree, in the drafting of which the HCC participated with representatives of all the sectors of engineering. The Presidential Decree defined the professional rights of each specialty and the common professional rights of all engineers and systematized and unified the provisions which were scattered and anachronistic⁶.

12. Additionally, Law 3919/2011 abolished the system of prior authorization and replaced it with a notification system to the public administration, unless the competent Ministry requested for its maintenance, which had to obtain a prior legal opinion by the HCC. In this scope, the HCC noted that, despite the possibility for the actuary to work and offer his services in various sectors, legislation imposed a licensing system only in the case of the provision of actuarial services to insurance companies. The HCC concluded that there are no overriding reasons of the public interest for maintaining the system of prior authorization in said profession since the insurance companies had the ability to make well informed choices and they were subject to the supervision of the competent authority. The HCC, also, considered that the imposition of exams to obtain the license, indirectly restricted access because of the way the subjects in which candidates were examined, were selected and marked, and the way the success basis was determined^{7,8}. Respectively, the HCC decided that the maintenance of a prior administrative authorization for the profession of dealer of antiquities and geographical restrictions did not appear to be justified on the basis of the protection of cultural, historical, national and artistic heritage. With reference to the profession of guides, the HCC decided that the request to obtain a diploma only from a specific school of guides constituted a restriction to access to the profession and was not considered proportional to the objective pursued, since there were also, other degrees from universities, which could ensure the quality of services⁹.

13. Furthermore, the HCC proposed the abolishment of fixed prices for the provision of services of independent evaluators, as well as restrictions to the access of the service, such as the numerous *clausus*, the exclusive rights for estimation services granted to them and the exclusive organization of independent evaluators through one association, because

⁵ Legal Opinion 34/2014, available in Greek <https://www.epant.gr/apofaseis-gnomodotiseis/item/1881-gnomodotisi-34-2014.html>

⁶ Presidential Decree 99/2018 for the Regulation of the profession of engineering with definition of professional rights for each specialty.

⁷ Legal Opinion 14/2012, available in Greek https://www.epant.gr/files/2012/apofaseis/Gnom_14_2012_ANALOGISTES_FEK.pdf

⁸ The HCC also made the same assessment for the same restrictions imposed in the profession of the accountant, i.e the prior authorization and the imposition of a certification system. The HCC concluded that the notification system that replaced the prior authorization was capable of safeguarding the same quality for the provision of services.

⁹ Legal Opinion 18/2012, available in Greek https://www.epant.gr/files/2012/apofaseis/Gnom_18_2012.pdf.

they were considered as disproportional to the objectives pursued¹⁰. It, also, proposed the abolishment of restrictions for private schools concerning the establishment based on nationality, the qualifications of the founders (natural and legal persons), the distances between establishments, maximum and the maximum number of establishments). Regarding the determination of tuition fees in private schools, the HCC considered that it may lead to distortions of competition and therefore proposed that a) the contracts of tuition fees should be freely negotiated by primary and secondary schools, b) they should cover all the years up to the completion of the studies and c) they should take into account changes on market condition (income, demand), changes in operating costs etc. It further proposed the abolishment of the restriction of prior approval by the administration of the advertisements made by vocational training institutes¹¹. The HCC, also, issued a legal opinion for the abolishment of restrictions on the establishment and operation of traders of tobacco (operation only in area of permanent residence, population criteria for the issuance of additional licenses etc) since they were not considered as proportional to the objective pursued (protection of disabled persons)¹². The Authority also advised for the abolition of the restriction of maximum capacity of care unites for old people¹³ as well as for the abolition of restrictions on capacity, minimum duration for reservation of stock, provisions of minimum capital, in the sector of fuels and natural gas¹⁴. Finally, the HCC also noted restrictions on the access to private art schools, where the conditions for the founder or legal representative (training and an extended period of teaching or dance experience) were considered excessive and without justification on grounds of public interest¹⁵.

14. Nevertheless, the HCC considered that the provision of prior authorization for professions related to security (trade of guns, explosives), was compatible and proportional to the pursued purpose, since the protection of life and public security constituted an overriding reason of public interest, which justified the maintenance of the prior administrative authorization. The HCC had the same assessment for the profession of security, for which it decided that the prior authorization for its exercise aims to safeguard the individual rights and freedom of citizens, which was achieved by establishing a strict operating legal framework and a continuous monitoring system¹⁶. The HCC, also, decided that the prior obligation for the butchers to study in the respective school is compatible with competition since there wasn't a numerous clausus as per the applicants and the purpose of the protection of public health was considered as proportional. The purpose of the protection of public health was also considered proportional regarding the provision of the

¹⁰ Legal Opinion 16/2012 available in Greek
https://www.epant.gr/files/2012/apofaseis/Gnom_16_2012_SOE_FEK.pdf

¹¹ Legal Opinion 20/2012, available in Greek
https://www.epant.gr/files/2012/apofaseis/GNOM_20_VI-2012.pdf

¹² Legal Opinion 23/2012, available in Greek
https://www.epant.gr/files/2012/apofaseis/GNOM_23_2012.pdf

¹³ Legal Opinion 25/2012, available in Greek,
https://www.epant.gr/files/2012/apofaseis/Gnom_25_2012.pdf

¹⁴ See further Legal Opinion 29/2012 on restrictions in fuel sector.
https://www.epant.gr/files/2012/apofaseis/GNOM_29_2012.pdf

¹⁵ Legal Opinion 37/2017 available in Greek,
https://www.epant.gr/files/2017/gnomodotiseis/Gnom_37__2017.pdf

¹⁶ Legal Opinion 13/2012, available in Greek
https://www.epant.gr/files/2012/apofaseis/GNOM_13_2012.pdf

law for minimum distances between poultry farms¹⁷. The same assessment was made for the profession of conservators of art and antiquities on the basis that the purpose of the protection of cultural heritage constituted an object of public interest which justified the prior authorization for its exercise¹⁸.

15. On the same basis, the HCC decided that the prior authorization system is justifiable for the profession of production and supply of propagating material and fertilizer for the protection of public health and environment^{19, 20}. The HCC also considered that the prior authorization for care unites for old people under the competence of the Ministry of Health is justified since the restriction is proportional to the objectives of the protection of the public health of particularly vulnerable aged people²¹. Additionally, the Authority considered as proportional to the objective of the protection of national security, energy supply, safe operation of the licensed activity and protection of environment, the prior authorization of the professions and activities, in the sector of fuels and natural gas^{22, 23}. Regarding the profession of shipping chemist, the professional qualifications (i.e. education, professional experience, and examinations) and other requirements (i.e. possession of appropriate equipment) were considered proportionate to the objective pursued (i.e. security measures within the ship repair zones)²⁴.

4. Conclusions

16. The abovementioned analysis highlighted the established role of the Hellenic Competition Commission in promoting the examination of effects on competition from the adoption of laws and regulations, especially within the framework of the economic adjustment programs applied in Greece during the economic crisis. Most of the proposals were adopted by the public administration and were interpreted into national legislation

¹⁷ Legal Opinion 17/2012, available in Greek https://www.epant.gr/files/2012/apofaseis/GNOM_17_2012.pdf

¹⁸ Legal Opinion 18/2012, available in Greek https://www.epant.gr/files/2012/apofaseis/Gnom_18_2012.pdf

¹⁹ Legal Opinion 19/2012, available in Greek https://www.epant.gr/files/2012/apofaseis/GNOM_19_2012.pdf

²⁰ The HCC advised for the existence of a prior authorization system regarding establishment and operation of private schools, foreign languages schools and all institutes of vocational training. However, regarding teachers of foreign languages, the HCC considered that the notification system should apply since there are no reasons of public interest which could justify the opposite. It also issued an opinion for the maintenance of the prior authorization system regarding the profession of lifeguards. See further Legal Opinion 22/2012, available in Greek https://www.epant.gr/files/2012/apofaseis/Gnom_22_2012.pdf

²¹ Legal Opinion 25/2012, available in Greek, https://www.epant.gr/files/2012/apofaseis/Gnom_25_2012.pdf

²² Legal Opinion 26/2012, available in Greek, https://www.epant.gr/files/2012/apofaseis/Gnom_26_2012.pdf and Legal Opinion 30/2013, available in Greek https://www.epant.gr/files/2013/apofaseis/Gnom_30_2013.pdf

²³ The same, also, for shops of sanitary interest, for reasons of public safety and protection of consumers and employees. See Legal Opinion 33/2013, available in Greek, https://www.epant.gr/files/2013/apofaseis/Gnom_33_2013.pdf

²⁴ Legal Opinion 35/2016, available in Greek, https://www.epant.gr/files/2016/apofaseis/Gnom_35_2016.pdf

with the aim to improving the conditions of competition to an extensive number of legal professions and to achieving higher quality of public goods/services to the most competitive prices. Finally, it should be noted that the HCC enhanced its advisory role vis-à-vis the public administration, also, by contributing significantly to three OECD Competition Assessment Reviews (2013) (2014) (2017), using OECD Competition Assessment Toolkit and analyzing Greek legislation in a number of various sectors. It also issued a guide on promoting and enhancing competition in public policy making in order to provide information to central government bodies and other public bodies about the need to ensure the protection of competition in the context of public policy making²⁵. Such initiatives confirm the HCC's capabilities and its commitment to further strengthen its advisory role.

²⁵ See further <https://www.epant.gr/en/enimerosi/publications/guides/item/2688-odigos-gia-dimosies-politikes-en.html>